

AMENDED IN ASSEMBLY AUGUST 18, 2008

AMENDED IN ASSEMBLY JULY 1, 2008

AMENDED IN ASSEMBLY JUNE 18, 2008

AMENDED IN SENATE MAY 14, 2008

AMENDED IN SENATE APRIL 21, 2008

**SENATE BILL**

**No. 1221**

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**Introduced by Senator Kuehl**

February 14, 2008

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An act to ~~amend~~ *repeal and add* Section 15438.5 of the Government Code, and to add Part 7 (commencing with Section 1179.100) to Division 1 of the Health and Safety Code, relating to health facility financing.

LEGISLATIVE COUNSEL'S DIGEST

SB 1221, as amended, Kuehl. Health facility financing.

Existing law authorizes, if a health facility seeking financing for a project pursuant to the California Health Facilities Financing Authority Act does not meet the guidelines established by the California Health Facilities Financing Authority with respect to bond rating, the authority to give special consideration, on a case-by-case basis, to financing the project if the health facility demonstrates to the satisfaction of the authority the financial feasibility of the project, and the performance of significant community service. For the purposes of these provisions, a health facility that performs a significant community service is one that contracts with Medi-Cal or that can demonstrate that it has fulfilled specified criteria regarding community service.

This bill would require any *participating health-facility institution*, except for specified children's hospitals, seeking financing for a project from the authority, a ~~local government~~ *city, county, special district*, or a joint powers authority, to demonstrate ~~significant the performance of~~ *community service, of each project location*, as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 15438.5 of the Government Code is  
2     repealed.

3     ~~15438.5. (a) It is the intent of the Legislature in enacting this~~  
4     ~~part to provide financing only, and, except as provided in~~  
5     ~~subdivisions (b), (c), and (d), only to health facilities that can~~  
6     ~~demonstrate the financial feasibility of their projects. It is further~~  
7     ~~the intent of the Legislature that all or part of any savings~~  
8     ~~experienced by a participating health institution, as a result of that~~  
9     ~~tax-exempt revenue bond funding, be passed on to the consuming~~  
10    ~~public through lower charges or containment of the rate of increase~~  
11    ~~in hospital rates. It is not the intent of the Legislature in enacting~~  
12    ~~this part to encourage unneeded health facility construction.~~  
13    ~~Further, it is not the intent of the Legislature to authorize the~~  
14    ~~authority to control or participate in the operation of hospitals,~~  
15    ~~except where default occurs or appears likely to occur.~~

16    ~~(b) When determining the financial feasibility of projects, the~~  
17    ~~authority shall consider the more favorable interest rates reasonably~~  
18    ~~anticipated through the issuance of revenue bonds under this part.~~  
19    ~~It is the intent of the Legislature that the authority attempt in~~  
20    ~~whatever ways possible to assist health facilities to arrange projects~~  
21    ~~that will meet the financial feasibility standards developed under~~  
22    ~~this part.~~

23    ~~(c) If a health facility seeking financing for a project pursuant~~  
24    ~~to this part does not meet the guidelines established by the authority~~  
25    ~~with respect to bond rating, the authority may nonetheless give~~  
26    ~~special consideration, on a case-by-case basis, to financing the~~  
27    ~~project if the health facility demonstrates to the satisfaction of the~~  
28    ~~authority the financial feasibility of the project, and the~~  
29    ~~performance of significant community service. For the purposes~~  
30    ~~of this part, a health facility that performs a significant community~~

1 service is one that contracts with Medi-Cal or that can demonstrate,  
2 with the burden of proof being on the health facility, that it has  
3 fulfilled at least two of the following criteria:

4 (1) On or before January 1, 1991, has established, and agrees  
5 to maintain, a 24-hour basic emergency medical service open to  
6 the public with a physician and surgeon on duty, or is a children's  
7 hospital as defined in Section 14087.21 of the Welfare and  
8 Institutions Code, that jointly provides basic or comprehensive  
9 emergency services in conjunction with another licensed hospital.  
10 This criterion shall not be utilized in a circumstance where a small  
11 and rural hospital, as defined in Section 442.2 of the Health and  
12 Safety Code, has not established a 24-hour basic emergency  
13 medical service with a physician and surgeon on duty or will  
14 operate a designated trauma center on a continuing basis during  
15 the life of the revenue bonds issued by the authority.

16 (2) Has adopted, and agrees to maintain on a continuing basis  
17 during the life of the revenue bonds issued by the authority, a  
18 policy, approved and recorded by the facility's board of directors,  
19 of treating all patients without regard to ability to pay, including,  
20 but not limited to, emergency room walk-in patients.

21 (3) Has provided and agrees to provide care, on a continuing  
22 basis during the life of the revenue bonds issued by the authority,  
23 to Medi-Cal and uninsured patients in an amount not less than 5  
24 percent of the facility's adjusted inpatient days as reported on an  
25 annual basis to the Office of Statewide Health Planning and  
26 Development.

27 (4) Has budgeted at least 5 percent of its net operating income  
28 to meeting the medical needs of uninsured patients and to providing  
29 other services, including, but not limited to, community education,  
30 primary care outreach in ambulatory settings, and unmet  
31 nonmedical needs, such as food, shelter, clothing, or transportation  
32 for vulnerable populations in the community, and agrees to  
33 continue that policy during the life of the revenue bonds issued by  
34 the authority.

35 (d) Enforcement of the conditions under which the authority  
36 issues bonds pursuant to this section shall be governed by the  
37 enforcement conditions under Section 15459.4.

38 *SEC. 2. Section 15438.5 is added to the Government Code, to*  
39 *read:*

1     15438.5. (a) *In enacting this part, the Legislature intends for*  
2 *the authority to assist in the provision of tax-exempt financing only*  
3 *to participating health institutions that can demonstrate the*  
4 *financial feasibility of the proposed project to be financed or the*  
5 *creditworthiness of the obligors with respect to the requested*  
6 *financing. It is further the intent of the Legislature that all or part*  
7 *of any savings experienced by a participating health institution,*  
8 *as a result of the tax-exempt financing, be passed on for the benefit*  
9 *of the public in the form of community service described in this*  
10 *section. Further, it is not the intent of the Legislature to authorize*  
11 *the authority to control or participate in the operation of health*  
12 *facilities, except where default occurs or appears likely to occur.*

13     (b) *When determining the financial feasibility of projects, the*  
14 *authority shall consider the more favorable interest rates*  
15 *reasonably anticipated through the issuance of revenue bonds*  
16 *under this part. It is the intent of the Legislature that the authority*  
17 *attempt in whatever ways possible to assist participating health*  
18 *institutions to arrange projects that will meet the financial*  
19 *feasibility standards developed under this part.*

20     (c) *Except for a participating health institution that operates*  
21 *as a children's hospital described in Section 10727 of the Welfare*  
22 *and Institutions Code, and except as provided in subdivision (d),*  
23 *a participating health institution seeking financing for a project*  
24 *pursuant to this part shall, for each project location, demonstrate,*  
25 *to the satisfaction of the authority, the performance of community*  
26 *service, by submitting to the authority all of the following:*

27     (1) *A copy of its policy of treating all patients without regard*  
28 *to ability to pay, in accordance with Section 1317 of the Health*  
29 *and Safety Code or, if the applicant is not subject to that section,*  
30 *a copy of its policy for providing emergency services without*  
31 *regard to a patient's ability to pay.*

32     (2) *Confirmation that the applicant maintains a California*  
33 *Medical Assistance Commission (CMAC) Contract, otherwise*  
34 *provides for the treatment of Medi-Cal eligible patients, or*  
35 *otherwise provides services to low-income individuals.*

36     (3) *A copy of its charity care policy pursuant to Section 127405*  
37 *of the Health and Safety Code.*

38     (4) *Confirmation that it maintains a mechanism for tracking*  
39 *and reporting its costs, charges, and clinical quality data, to the*  
40 *extent required by state and federal agencies.*

(5) A copy of the most recent community benefits plan, as defined in subdivision (a) of Section 127345 of the Health and Safety Code, including an implementation schedule and economic valuation of the community benefits as set forth in Sections 127350 and 127355 of the Health and Safety Code.

(d) (1) If a participating health institution that is a hospital subject to the community benefits requirements of Article 2 (commencing with Section 127340) of Chapter 2 of Part 2 of Division 107 of the Health and Safety Code does not submit the information described in paragraphs (1) to (5), inclusive, of subdivision (c), the participating health institution shall demonstrate to the satisfaction of the authority the performance of community service by submitting to the authority the most recent community benefits plan of the hospital. The participating health institution shall identify its priorities, as determined by the community needs assessment, and demonstrate that it has taken action on most of these priorities.

(2) If a participating health institution is not a hospital subject to the community benefits requirements of Article 2 (commencing with Section 127340) of Chapter 2 of Part 2 of Division 107 of the Health and Safety Code, but is a nonhospital affiliate of a participating health institution, the participating health institution shall demonstrate to the authority the performance of community service by submitting to the agency any item of information described in paragraphs (1) to (5), inclusive, of subdivision (c) or by other means, as described in paragraph (3). For purposes of this section, a “nonhospital affiliate” means a nonhospital entity organized under the laws of the state which is directly controlled by or under common control or having a governing board identical with the participating health institution or any other affiliate of the participating health institution. For purposes of this paragraph, “control” means the power to direct the management and policies of an entity through the ownership of at least a majority of its voting securities or the right to designate or elect at least a majority of the members of its board of directors by contract or otherwise.

(3) If a participating health institution is neither a hospital subject to the community benefits requirements of Article 2 (commencing with Section 127340) of Chapter 2 of Part 2 of Division 107 of the Health and Safety Code or a nonhospital

1 *affiliate, and does not submit any of the items of information*  
2 *described in paragraphs (1) to (5), inclusive, of subdivision (c),*  
3 *the participating health institution shall demonstrate to the*  
4 *authority the performance of community service by other means,*  
5 *including, but not limited to, providing a certification that the*  
6 *participating health institution is a federally qualified health*  
7 *center, or a primary care clinic described in subdivision (a) of*  
8 *Section 1204 of, subdivision (c) of Section 1206 of, or subdivision*  
9 *(h) of Section 1206 of, the Health and Safety Code.*

10 *(e) Enforcement of the conditions under which the authority*  
11 *issues bonds pursuant to this section shall be governed by the*  
12 *enforcement conditions under Section 15459.4.*

13 *(f) Notwithstanding any other provision of law, nothing in this*  
14 *section nor any enforcement proceeding brought pursuant to this*  
15 *section shall affect the validity or enforceability of any bonds*  
16 *issued by the authority under this part.*

17 ~~SECTION 1. Section 15438.5 of the Government Code is~~  
18 ~~amended to read:~~

19 ~~15438.5. (a) It is the intent of the Legislature in enacting this~~  
20 ~~part to provide financing only to health facilities that can~~  
21 ~~demonstrate the financial feasibility of their projects. It is further~~  
22 ~~the intent of the Legislature that all or part of any savings~~  
23 ~~experienced by a participating health institution, as a result of that~~  
24 ~~tax-exempt revenue bond funding, be passed on to the consuming~~  
25 ~~public. Further, it is not the intent of the Legislature to authorize~~  
26 ~~the authority to control or participate in the operation of health~~  
27 ~~facilities, except where default occurs or appears likely to occur.~~

28 ~~(b) When determining the financial feasibility of projects, the~~  
29 ~~authority shall consider the more favorable interest rates reasonably~~  
30 ~~anticipated through the issuance of revenue bonds under this part.~~  
31 ~~It is the intent of the Legislature that the authority attempt in~~  
32 ~~whatever ways possible to assist health facilities to arrange projects~~  
33 ~~that will meet the financial feasibility standards developed under~~  
34 ~~this part.~~

35 ~~(c) Except for a health facility that operates as a children's~~  
36 ~~hospital described in Section 10727 of the Welfare and Institutions~~  
37 ~~Code, a health facility seeking financing for a project pursuant to~~  
38 ~~this part shall demonstrate to the satisfaction of the authority the~~  
39 ~~performance of significant community service. In determining~~  
40 ~~whether a health facility performs significant community service~~

1 the authority shall first consider whether the health facility has a  
2 community benefit plan that includes an implementation schedule  
3 and economic valuation of the community benefits and whether  
4 the health facility does the following:

5 (1) Establishes and maintains a policy of treating all patients  
6 without regard to ability to pay, pursuant to Section 1317 of the  
7 Health and Safety Code or, if the health facility is not subject to  
8 that section, maintains its own policy for providing emergency  
9 services without regard to ability to pay.

10 (2) Maintains a California Medical Assistance Commission  
11 (CMAC) contract or otherwise treats Medi-Cal eligible patients.

12 (3) Establishes and maintains a charity care policy pursuant to  
13 Section 127405 of the Health and Safety Code.

14 (4) Establishes and maintains a mechanism for tracking and  
15 reporting its costs and charges for services, and clinical quality  
16 data required by state and federal agencies, including, but not  
17 limited to, the federal Centers for Medicare and Medicaid Services,  
18 pursuant to the Hospital Quality Alliance.

19 (d) If a health facility does not take the actions described in  
20 paragraphs (1) to (4), inclusive, of subdivision (c), the health  
21 facility shall demonstrate to the satisfaction of the authority the  
22 performance of significant community service by submitting the  
23 most recent community benefit plan when the health facility is  
24 required by law to have one. The health facility shall identify its  
25 priorities, as determined by the community needs assessment, and  
26 demonstrate that it has taken action on most of these priorities.  
27 When the health facility is not required to complete a community  
28 benefit plan, the health facility shall demonstrate to the authority  
29 the performance of significant community benefit by other means,  
30 including being a federally qualified health center.

31 (e) Enforcement of the conditions under which the authority  
32 issues bonds pursuant to this section shall be governed by the  
33 enforcement conditions under Section 15459.4.

34 SEC. 2.

35 SEC. 3. Part 7 (commencing with Section 1179.100) is added  
36 to Division 1 of the Health and Safety Code, to read:

## 1     PART 7. LOCAL FINANCING OF HEALTH FACILITIES

2  
3     1179.100. *For purposes of this part, the following definitions*  
4 *shall apply:*

5     (a) *“Health facility” shall have the same meaning as set forth*  
6 *in subdivision (d) of Section 15432 of the Government Code.*

7     (b) *“Local agency” means a city, county, special district, or*  
8 *joint powers authority.*

9     (c) *“Participating health institution” means a city, county, or*  
10 *city and county, a district hospital, or a private nonprofit*  
11 *corporation or association authorized by the laws of this state to*  
12 *provide or operate a health facility and that, with the assistance*  
13 *of a local agency, undertakes the financing or refinancing of a*  
14 *project or of working capital.*

15     (d) *“Project” shall have the meaning set forth in Section 15432*  
16 *of the Government Code.*

17     1179.101. (a) *In enacting this part, the Legislature intends*  
18 *for a local agency to assist in the provision of tax-exempt financing*  
19 *only to a participating health institution that can demonstrate the*  
20 *financial feasibility of the proposed project to be financed or the*  
21 *creditworthiness of the obligors with respect to the requested*  
22 *financing. It is further the intent of the Legislature that all or part*  
23 *of any savings experienced by a participating health institution,*  
24 *as a result of the tax-exempt financing, be passed on for the benefit*  
25 *of the public in the form of community service described in this*  
26 *section. Further, it is not the intent of the Legislature to authorize*  
27 *a local agency to control or participate in the operation of health*  
28 *facilities, except where default occurs or appears likely to occur.*

29     (b) *Except for a participating health institution that operates*  
30 *as a children’s hospital described in Section 10727 of the Welfare*  
31 *and Institutions Code and except as provided in subdivision (c),*  
32 *a participating health institution seeking financing for a project*  
33 *pursuant to this part shall, for each project location, demonstrate,*  
34 *to the satisfaction of the local agency the performance of*  
35 *community service, by submitting to the local agency all of the*  
36 *following:*

37     (1) *A copy of its policy of treating all patients without regard*  
38 *to ability to pay, in accordance with Section 1317 or, if the*  
39 *applicant is not subject to that section, a copy of its policy for*



1 *providing emergency services without regard to a patient's ability*  
2 *to pay.*

3 *(2) Confirmation that the applicant maintains a California*  
4 *Medical Assistance Commission (CMAC) Contract, otherwise*  
5 *provides for the treatment of Medi-Cal eligible patients, or*  
6 *otherwise provides services to low-income individuals.*

7 *(3) A copy of its charity care policy pursuant to Section 127405.*

8 *(4) Confirmation that it maintains a mechanism for tracking*  
9 *and reporting its costs, charges, and clinical quality data, to the*  
10 *extent required by state and federal agencies.*

11 *(5) A copy of the most recent community benefits plan, as defined*  
12 *in subdivision (a) of Section 127345, including an implementation*  
13 *schedule and economic valuation of the community benefits as set*  
14 *forth in Sections 127350 and 127355.*

15 *(c) (1) If a participating health institution that is a hospital*  
16 *subject to the community benefits requirements of Article 2*  
17 *(commencing with Section 127340) of Chapter 2 of Part 2 of*  
18 *Division 107 does not submit the information described in*  
19 *paragraphs (1) to (5), inclusive, of subdivision (b), the participating*  
20 *health institution shall demonstrate to the satisfaction of the local*  
21 *agency the performance of community service by submitting to the*  
22 *local agency the most recent community benefits plan of the*  
23 *hospital. The participating health institution shall identify its*  
24 *priorities, as determined by the community needs assessment, and*  
25 *demonstrate that it has taken action on most of these priorities.*

26 *(2) If a participating health institution is not a hospital subject*  
27 *to the community benefits requirements of Article 2 (commencing*  
28 *with Section 127340) of Chapter 2 of Part 2 of Division 107, but*  
29 *is a nonhospital affiliate of a participating health institution, the*  
30 *participating health institution shall demonstrate to the local*  
31 *agency the performance of community service by submitting to the*  
32 *local agency any item of information described in paragraphs (1)*  
33 *to (5), inclusive, of subdivision (b) or by other means, as described*  
34 *in paragraph (3). For purposes of this section, a "nonhospital*  
35 *affiliate" means a nonhospital entity organized under the laws of*  
36 *the state which is directly controlled by or under common control*  
37 *or having a governing board identical with the participating health*  
38 *institution or any other affiliate of the participating health*  
39 *institution. For purposes of this paragraph, "control" means the*  
40 *power to direct the management and policies of an entity through*

1 *the ownership of at least a majority of its voting securities or the*  
2 *right to designate or elect at least a majority of the members of its*  
3 *board of directors by contract or otherwise.*

4 *(3) If a participating health institution is neither a hospital*  
5 *subject to the community benefits requirements of Article 2*  
6 *(commencing with Section 127340) of Chapter 2 of Part 2 of*  
7 *Division 107 or a nonhospital affiliate, and does not submit any*  
8 *of the items of information described in paragraphs (1) to (5),*  
9 *inclusive, of subdivision (b), the participating health institution*  
10 *shall demonstrate to the local agency the performance of*  
11 *community service by other means, including, but not limited to,*  
12 *providing a certification that the participating health institution*  
13 *is a federally qualified health center, or a primary care clinic*  
14 *described in subdivision (a) of Section 1204, subdivision (c) of*  
15 *Section 1206, or subdivision (h) of Section 1206.*

16 *(d) The remedies and sanctions available to the local agency*  
17 *for failure by a participating health institution to comply with this*  
18 *section shall include referring the alleged violation to the office*  
19 *of the Attorney General for legal action as described in Section*  
20 *15459.4 of the Government Code.*

21 *(e) Notwithstanding any other provision of law, nothing in this*  
22 *section nor any enforcement proceeding brought pursuant to this*  
23 *section shall affect the validity or enforceability of any bonds*  
24 *issued, or other form of financing provided, by a local agency.*

25 ~~1179.100. (a) It is the intent of the Legislature in enacting this~~  
26 ~~part to provide financing only to health facilities that can~~  
27 ~~demonstrate the financial feasibility of their projects. It is further~~  
28 ~~the intent of the Legislature that all or part of any savings~~  
29 ~~experienced by a participating health institution, as a result of that~~  
30 ~~tax-exempt revenue bond funding, be passed on to the consuming~~  
31 ~~public. Further, it is not the intent of the Legislature to authorize~~  
32 ~~the authority to control or participate in the operation of hospitals~~  
33 ~~health facilities, except where default occurs or appears likely to~~  
34 ~~occur.~~

35 ~~(b) Except as provided in subdivision (c), a health facility, as~~  
36 ~~defined in subdivision (d) of Section 15432 of the Government~~  
37 ~~Code, seeking financing for a project, as defined in subdivision~~  
38 ~~(f) of Section 15432 of the Government Code, from a local~~  
39 ~~government or joint powers authority shall demonstrate to the~~  
40 ~~satisfaction of the local government or joint powers authority the~~

1 performance of significant community service. In determining  
2 whether a health facility performs significant community service;  
3 the local government or joint powers authority shall first consider  
4 whether the health facility has a community benefit plan that  
5 includes an implementation schedule and economic valuation of  
6 the community benefits and whether the health facility does the  
7 following:

8 (1) Establishes and maintains a policy of treating all patients  
9 without regard to ability to pay, pursuant to Section 1317 of the  
10 Health and Safety Code or, if the health facility is not subject to  
11 that section, maintains its own policy for providing emergency  
12 services without regard to ability to pay.

13 (2) Maintains a California Medical Assistance Commission  
14 (CMAC) contract or otherwise treats Medi-Cal eligible patients.

15 (3) Establishes and maintains a charity care policy pursuant to  
16 Section 127405 of the Health and Safety Code.

17 (4) Establishes and maintains a mechanism for tracking and  
18 reporting its costs and charges for services, and clinical quality  
19 data required by state and federal agencies, including, but not  
20 limited to, the federal Centers for Medicare and Medicaid Services;  
21 pursuant to the Hospital Quality Alliance.

22 (e) The significant community service requirement of this  
23 section shall not apply to a health facility that operates as a  
24 children's hospital described in Section 10727 of the Welfare and  
25 Institutions Code.

26 (d) If a health facility does not take the actions described in  
27 paragraphs (1) to (4), inclusive, of subdivision (b), the health  
28 facility shall demonstrate to the satisfaction of the local government  
29 or joint powers authority the performance of significant community  
30 service by submitting the most recent community benefit plan  
31 when the health facility is required by law to have one. The health  
32 facility shall identify its priorities, as determined by the community  
33 needs assessment, and demonstrate that it has taken action on most  
34 of these priorities. When the health facility is not required to  
35 complete a community benefit plan, the health facility shall  
36 demonstrate to the authority the performance of significant  
37 community benefit by other means, including being a federally  
38 qualified health center.

39 (e) The remedies and sanctions available to the local government  
40 or joint powers authority against the borrower for failure to adhere

1 ~~to the assurance given under this section shall include referring~~  
2 ~~the violation to the office of the Attorney General for legal action~~  
3 ~~authorized under existing law or other remedy at law or equity.~~  
4 ~~However, the remedies obtainable by the legal action shall not~~  
5 ~~include withdrawal or cancellation of the project or projects~~  
6 ~~financed or to be financed through the issuance of revenue bonds.~~

O